



DEVELOPMENT AGREEMENT

#05-2022

FORMER GOVE ELEMENTARY SCHOOL PROPERTY DEVELOPMENT

**CITY OF BELLE GLADE
PURCHASING DIVISION
110 DR. MARTIN LUTHER KING, JR. BLVD., WEST
BELLE GLADE, FL 33430-3900**



DEVELOPMENT AGREEMENT

FORMER GOVE ELEMENTARY SCHOOL PROPERTY DEVELOPMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made this _____ day of _____, 2021, between the CITY OF BELLE GLADE, a Florida municipal corporation (the "CITY") and _____, a Florida corporation ("Developer").

WITNESSETH:

WHEREAS, the CITY Commission of the CITY of Belle Glade accepted the donation of the former Gove Elementary School property ("property") from the Palm Beach County School Board which is more particularly described herein; and

WHEREAS, the deed conveying the property restricts the use of the property for the development of workforce housing and directly related associated uses; and

WHEREAS, the CITY issued Request for Proposals number 05-2022 ("RFP"), inviting developers to submit proposals for the demolition of the existing structures on the property and for a development plan for the planning, design, financing, construction and management of the site as a vibrant and sustainable multi-family workforce housing development with directly associated related uses/amenities; and

WHEREAS, Developer responded to the RFP and the CITY Commission, on _____, 2022, by resolution no. _____, tentatively accepted the proposal from the Developer subject to the negotiation, preparation and approval of a definitive development agreement; and

WHEREAS, this Agreement is that definitive development agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, the parties agree as follows:

ARTICLE I

PROJECT OVERVIEW

1.1 The Project. The Developer has submitted a proposal (the "Proposal") to demolish existing structures and to develop and construct certain improvements consistent with the City's RFP which shall include developing Workforce Housing and directly related associated uses, as more particularly detailed in Exhibit "A," attached hereto ("Project"). The Project shall further include the design, construction and installation of all Infrastructure Improvements and construction of the Vertical Improvements as defined herein, for the Workforce Housing and directly related associated uses.

1.2 The property comprising the parcels upon which the development shall be located is shown in Exhibit "B", attached hereto, and shall be known as the "Project Area." The Project Area



is located at 900 SE Avenue G and is legally described as Parcel #04374405010040010, S/D of 5-44-37, Site 7, according to the Public Records of the Property Appraiser, Palm Beach County, Florida.

1.2 A Project Development Plan, describing the Project Area and the Project as shown on Exhibits "A" and "B" is attached hereto as Exhibit "C".

1.3 CITY Deed. The CITY owns the property comprising the Project Area. The deed, which was given to the CITY by the Palm Beach County School District, has a restriction that the property can be used only for "Workforce Housing and directly related associated uses." The CITY agrees to convey the property to the Developer at no cost to the Developer with the deed restriction. In addition to the restriction in the deed, the deed shall contain reverter clauses tied to the deed restriction, this Agreement and construction deadlines.

1.4 CITY Determination. The CITY has determined that the Project is consistent with and furthers the goals and objectives of the CITY Comprehensive Plan and that its construction and development will promote the health, safety, and welfare of the residents of the CITY.

ARTICLE II

DEFINITIONS

As used in this Agreement the following terms shall have the meaning set opposite each:

2.1 Agreement. This Development Agreement between the City of Belle Glade and the Developer.

2.2 Agreement Administrator. The Finance Director of the CITY, his or her deputy or his or her designee.

2.3 Project Manager/Coordinator. To be designated by the CITY.

2.3 Builders. One or more individuals or firms constituting a general contractor properly licensed by Palm Beach County, the State of Florida or other appropriate jurisdiction to the extent required by applicable law to perform contracting services to construct the Improvements, bonded to the extent required by applicable law and Agreement specifications.

2.4 City. The City of Belle Glade, a municipal corporation of the State of Florida.

2.5 City Commission. The governing body of the CITY.

2.6 Developer. A Florida corporation, or any successors or assigns.

2.7 Effective Date. The date on which this Agreement is executed by the later of the Developer and the CITY.

2.8 Improvements. The Infrastructure and Vertical Improvements constructed by the Developer.



2.9 Infrastructure Improvements. The improvements on public or private property to be constructed in the Project Area or adjacent thereto, including the development of plans and specifications, designs, tests, engineering and feasibility studies and drawings therefor or repairs as proposed to be constructed by the Developer, necessary to commence construction of Vertical Improvements, described herein, including, but not limited to, paving, lighting and landscaping, water, sewer and storm drainage systems to service the Project, sewers and sewer connections, if required, roads and sidewalks in accordance with this Agreement.

2.10 Person. Any individual, corporation, firm, partnership, trust, association, or other entity of any nature.

2.11 Plans and Specifications. The documents required for the construction of the Infrastructure Improvements that may include predesign plans and drawings, preliminary plans and drawings, schematic design documents, design development documents, together with all amendments and modifications thereof, approved by CITY and Developer as provided in this Agreement.

2.12 Project. The project as described in Section 1.1 of this Agreement.

2.13 Project Area. The property upon which the Developer will construct the Workforce Housing and directly related associated uses pursuant to and described in this Agreement.

2.14 Project Budget. The budget prepared by the Developer, as applicable, that shows the anticipated line items and the estimated costs for all the items that the Developer expects to incur in connection with the development of the Project Area and the construction of the Improvements.

2.15 Project Development Plan. The plan prepared by the Developer as applicable, as described in Section 1.1 of this Agreement.

2.16 Project Schedule. The schedule and timeframe for the submittal of applications for approvals required by this Agreement, and for the commencement and completion of Improvements pursuant to this Agreement, further described in Section 3.4 of this Agreement.

2.17 Reasonable Efforts. A good faith attempt by a Person to cause a result, but not an assurance or guarantee that such result will be achieved.

2.18 Site(s). Location and/or Workforce Housing and directly related associated uses structure built upon the site by the Developer.

2.19 Workforce Housing. Housing affordable to natural persons or families whose total annual household income does not exceed 140 percent of the area median income for Palm Beach County, adjusted for household size. It is a program to increase housing opportunities for people employed in Palm Beach County jobs to purchase housing at below market prices.

2.20 Vertical Improvements. Any buildings, structures and other improvements shown on the Project Development Plan to be constructed in the Project Area in accordance with this



Agreement, including, without limitation, all residential units, and all other improvements appurtenant to such residential units.

2.21 Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement. Words used herein in the singular shall include the plural and words in the masculine/feminine/neuter gender shall include words in the masculine/feminine/neuter where the text of this Agreement requires.

ARTICLE III

APPROVALS; PERFORMANCE SCHEDULES

3.1 Land Use/Zoning. The Project Area is located at 900 SE Avenue G, Belle Glade, Florida. The future land use classification for the Project Area is **Residential**. The zoning classification for the Project Area is **R1**. Developer has satisfied itself that the future land use and zoning classifications are consistent with its Project.

3.2 Vacation of Streets. If applicable, the CITY's staff will work with the Developer to apply for and process any required vacations and abandonment of streets, roads, alleys and rights-of-way currently lying within, or contiguous to, the Project Area, provided, however, that nothing herein shall waive the CITY's police powers and obligations with respect to the review of a vacation request or to require the CITY to waive any such rights or requirements when acting in its governmental and regulatory capacity.

3.3 Governmental Approval. The Developer, as applicable, with the assistance of the CITY's staff, shall use all Reasonable Efforts to obtain or cause to be obtained all appropriate approvals, permits, subdivisions, variances or waivers necessary under applicable law for construction of the Project as contemplated by this Agreement and as required by the applicable governmental authority. The Developer shall comply with all applicable zoning, subdivision, land use and/or environmental laws; provided that the foregoing shall not relieve the Developer of the obligation to pay water charges, pollution control charges and electrical service charges with respect to the Vertical Improvements, at their normal rates or levels, nor shall anything herein waive the CITY's police powers and obligations with respect to the review of development approval applications acting in its governmental and regulatory capacity.

3.4 Project Schedule. The Developer has prepared a Project Schedule setting forth specific dates for the performance of respective obligations under this Agreement (herein called the "Project Schedule"). The Project Schedule is hereby approved by the CITY and the Developer and is attached hereto as Exhibit "D". Subject to the terms of this Agreement, the Developer hereby agrees to undertake and complete the construction and development of the Project in accordance with this Agreement and the Project Schedule, and to comply with all of the obligations and abide by all the dates set forth therein. The CITY hereby agrees to complete those acts to be performed by the CITY within the dates set forth in the Project Schedule, and to use all reasonable efforts to cause those acts to be performed by the CITY described in the Project Schedule to be completed within the dates established by the Project Schedule, and to otherwise comply with all of the obligations of the CITY and abide by all the dates set forth therein. The Project Schedule and areas affected by the schedule may be modified by Developer as applicable, upon providing advance notice of such modification to the CITY, subject to approval by the Agreement



Administrator in conjunction with the project manager who will notify Developer within fourteen (14) days of such submission whether the Developer submission is approved or whether it must be placed before the CITY Commission for approval, which approval will not be unreasonably withheld.

3.5 Extensions Construction and development of the Project shall be completed no later than 24 months from the issuance of the first building permit, provided however, the CITY may approve up to two (2) consecutive six (6) month extensions for such completion upon the request of the Developer, as applicable, which approval will not be unreasonably withheld. The Project Schedule will be extended for events constituting Force Majeure as provided in Article 11.4 hereof; including delays caused by the CITY, Palm Beach County, or other regulatory agencies with authority over necessary governmental approvals.

3.6 Approval of Agreement. By the execution hereof:

The CITY represents that the execution and delivery hereof has been approved at a duly convened meeting of the CITY and the same is binding upon and enforceable against the CITY in accordance with its terms.

The Developer represents that: (i) the execution and delivery hereof has been approved by all parties whose approval is required, (ii) this Agreement is binding upon the Developer and enforceable against it in accordance with its terms; (iii) the Persons executing this Agreement on behalf of the Developer are duly authorized and are empowered to execute the same for and on behalf the Developer.

ARTICLE IV

PROJECT FINANCING

4.1 Developer Funds. The Developer will submit to the Agreement Administrator in conjunction with the project manager such documentation in order to demonstrate to the CITY the Developer's financial commitment to construct the Project. The documentation shall be due as set forth in the Project Schedule. The requirement to submit the documentation may be satisfied by submittal to the CITY of a letter, on the Developer's corporate letterhead, that Developer shall finance its commitment from corporate funds. The Developer's failure to provide such documentation shall constitute an Event of Default, as hereinafter defined, upon which occurrence the provisions of Article VII shall become applicable, unless the time for such submittal is extended by the CITY.

4.2 Coordination of Infrastructure Improvements. The Developer and the CITY recognize that there must be coordination of Infrastructure Improvements with those infrastructure improvements being constructed by the CITY or other developers in connection with other projects. The Developer agrees to coordinate the design and construction of Infrastructure Improvements under this Agreement with such other projects in an effort to accommodate timing issues and to reduce duplication.

4.3 Bonds to be Provided by the Developer. Before the commencement of construction of any of the Improvements, the Developer shall furnish and provide to the Agreement



Administrator in conjunction with the project manager a Payment and Performance Bond (Bond) satisfying the requirements of Section 255.05, Florida Statutes ("Payment and Performance Bond"). The Bonds must guarantee the completion of the construction of the Improvements and shall include the CITY as an obligee. The Bonds shall be in the amount of not less than the costs of development and construction of the entire site.

4.3.1 All bonds shall be in the form prescribed by the Agreement Documents (defined in section 11.9) except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

4.3.2 The bonds shall be conditioned upon full performance of all obligations imposed upon the Developer or Builder under the Agreement Documents. The bonds must be executed by a company licensed to do business in the State of Florida and must be in a form acceptable to and approved by CITY's Attorney. The bonds shall provide that in the event Developer or Builder defaults or otherwise breaches this Agreement, the CITY shall have recourse against the bond for all damages that the CITY would be entitled to from Developer under this Agreement and for specific performance for the surety to complete the Project in accordance with the terms and conditions of the Agreement Documents. In the event the parties agree on a modification to increase the Project's Budget, the CITY may require additional bonding up to one hundred percent (100%) of the increase in the Project's Budget by directing the Developer to increase the amount of the existing bond or to obtain additional bonds.

ARTICLE V

TAXES AND INSURANCE

5.1 Taxes and Other Charges. The Developer will pay and discharge or cause to be paid and discharged all taxes, charges, liabilities or claim of any type at any time assessed against or incurred by the Developer, or which could become a lien against the Developer, relating to the Project Area. Nothing in this subsection shall require the payment of any such sum if the Developer promptly notifies the CITY and by appropriate proceedings contests the same in good faith.

5.2 Insurance.

5.2.1 The Developer according to the scope of development undertaken by each party, will maintain, at its sole cost and expense, adequate insurance with responsible insurers with coverage normally obtained by businesses similar to that of the Developer but covering at least: (i) damage to physical property from fire and other hazards for the full insurable value of such property; (ii) liability on account of injury to persons; and (iii) insurance against theft,



forgery or embezzlement or other illegal acts of officers or employees in reasonable amounts.

The Developer, at his sole cost and expense, with the CITY listed as an additional named insured, shall also obtain and maintain the following policies of insurance:

- a. Builders Risk insurance until construction of the Improvements has been completed. Such policy to be obtained by the Developer shall be in an amount of no less than 80% of the replacement value of Workforce Housing and directly related associated uses required to be constructed by the Developer under this Agreement. The Builder's Risk insurance must be on an all risk basis, including, but not limited to the risk of direct physical loss or damage by fire, lightning, windstorm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and other such causes as covered by such form of insurance. Such policy shall include: (1) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal additional insurance; (2) a "Replacement Cost Endorsement" in amount sufficient to prevent the insured from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the full replacement cost, to be determined at least once annually and subject to reasonable approval by the CITY and (3) an endorsement to include coverage for budgeted soft costs.
- b. Flood insurance if any part of the Project Area is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto) in an amount at least equal to the value of the Improvements or the maximum limit of coverage available with respect to the Improvements under such Act, whichever is less.
- c. Commercial General Liability insurance, broad form with endorsements naming the CITY as additional insured. The insurance must cover the Developer's operations and provide coverage for bodily injury and property damage. The Developer may choose to provide this coverage through an O.C.P. (Owner's, Contractor's Protective) Policy with review and approval of the CITY. The limits of liability shall be a minimum of \$1,000,000 per occurrence or \$3,000,000 aggregate. The Developer may choose to provide this coverage through an O.C.P. (Owner's, Contractor's Protective) Policy with review and approval of the CITY. The limits of liability shall be a minimum of \$1,000,000 per occurrence or \$3,000,000 aggregate.



- d. Comprehensive Automobile Liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect Developer from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles including, but not limited to, leased and rented automobiles, whether such operations be by the Developer or by anyone, directly or indirectly, employed by the Developer.
- e. Worker's Compensation at the statutory amounts and limits as prescribed by applicable law.
- f. Such other insurance as may be from time to time be reasonably required by the CITY in order to protect its or the CITY's interests and which is customarily required by institutional mortgagees with respect to similar properties similarly situated.
- g. The insurance coverage afforded under the policies described in this section shall be primary and non-contributing with respect to any insurance carried independently by the CITY.

5.2.3 All policies of insurance (the "Policies") required pursuant to this Section:

- a. shall be issued by insurers reasonably satisfactory to the CITY.
- b. shall be maintained throughout the term of this Agreement without cost to the CITY.
- c. if requested, copies shall be delivered to the CITY.
- d. shall contain such provisions as the CITY deem reasonably necessary or desirable to protect its interests, including, without limitation, endorsements providing that neither the CITY, the CITY nor any other party shall be a co-insurer under such Policies and that the CITY shall receive at least thirty (30) days prior written notice of any modification or cancellation; and
- e. shall be satisfactory in form and substance to the CITY and shall be approved by the CITY through its Agreement Administrator in conjunction with the project manager in their reasonable discretion, as to amounts, form, risk coverage, deductibles, loss payees and insureds.

5.2.4 The Developer shall pay the premiums for the Policies as the same become due and payable.

5.2.5 The Developer may self-insure all or a portion of the insurance coverage and limit requirements required by this Section.



ARTICLE VI

THE DEVELOPMENT

6.1 **Scope of Development.** The Developer shall be responsible for arranging, managing, overseeing, coordinating and administering the total development subject to the terms and conditions provided in this Agreement. The Developer shall demolish the existing structures and construct and develop, or cause to be constructed and developed, all Improvements which the Developer is obligated to construct and develop in accordance with the Project, Project Plan, and Project Schedule, and subject to the conditions established in this Agreement.

6.2 **Permits.** All Vertical Improvements shall be constructed by the Developer, pursuant to a building or engineering permit or permits, as applicable, issued by the CITY covering each such improvement. The Developer is responsible for obtaining all required permits for Infrastructure Improvements as applicable and required from all jurisdictional authorities.

6.3 **Cost of Development.** Except as otherwise set forth herein, the Developer shall pay the cost of constructing and developing the Vertical Improvements and Infrastructure Improvements.

6.4 **Project Development Plan.** Notwithstanding the requirements for zoning and permit approvals as applicable, the Project Development Plan attached hereto as Exhibit "C" is hereby approved by the CITY. Any proposed modifications to the Project Development Plan, as approved hereby, shall be submitted to the Agreement Administrator in conjunction with the project manager for approval, who will notify Developer within fourteen (14) days of such submission whether the Developer submission is approved or must be placed before the CITY Commission for approval, which approval will not be unreasonably withheld. If the proposed modifications are denied or approved with conditions, the Developer, will have thirty (30) days to either: (a) give notice of a Termination Event in accordance with Article IX of this Agreement; or (b) include the conditions or changes in the Project Development Plan. If the Developer includes the changes, the revised modifications to the Project Development Plan will be resubmitted to the Agreement Administrator in conjunction with the project manager and if it is determined that changes conform with the conditions requested, the Agreement Administrator in conjunction with the project manager will approve such modifications. If the Developer and Agreement Administrator in conjunction with the project manager cannot reach agreement then the Developer may appeal the Agreement Administrator's determination to the CITY Commission or give notice of a Termination Event in accordance with Article IX of this Agreement. If the CITY Commission agrees with the Agreement Administrator the Developer may give notice of a Termination Event in accordance with Article IX of this Agreement.

6.4.1 Prior to the submission to the CITY of an application for the first building permit for demolition of the existing buildings or for the first engineering permit for construction or installation of the Infrastructure Improvements, the Developer, shall submit the final Plans and Specifications to the Agreement Administrator in conjunction with the project manager for a determination that the Plans and Specifications are consistent with the Project Development Plan in effect at the time of such submission. Such determination of consistency will not be unreasonably withheld. Any such requests shall be acted upon by



the Agreement Administrator in conjunction with the project manager within fourteen (14) days of the submission of such request or the Plans and Specifications will be deemed to be consistent with the Project Development Plan by the CITY. If the Agreement Administrator in conjunction with the project manager determines that the Plans and Specifications are not consistent with the Project Development Plan, the Developer will have thirty (30) days to either: (a) appeal the decision to the CITY Commission, (b) give notice of a Termination Event in accordance with Article IX of this Agreement; or (c) modify the Plans and Specifications as required by the Agreement Administrator in conjunction with the project manager. If the Developer submit(s) modifications to the Plans and Specifications as required by the Agreement Administrator in conjunction with the project manager, the Agreement Administrator in conjunction with the project manager shall determine if such modifications are consistent with the Project Development Plan. If the Developer and Agreement Administrator in conjunction with the project manager cannot reach agreement, then the Developer may give notice of a Termination Event in accordance with Article IX of this Agreement.

6.5 Changes to Project Schedule. If required, due to changes in the Project Development Plan, the Project Schedule shall be revised by the Developer to reflect such changes to the Project Development Plan. The Agreement Administrator in conjunction with the project manager must approve of the changes to the Project Schedule. If the Developer and Agreement Administrator in conjunction with the project manager cannot reach agreement then the Developer may appeal the decision to the CITY Commission or give notice of a Termination Event in accordance with Article IX of this Agreement. If the Developer appeals and the CITY Commission agrees with the Agreement Administrator, then the Developer may give notice of a Termination Event in accordance with Article IX of this Agreement.

6.6 Submission of Applications for Development Permit Approval. If zoning, site plan or vacation or other development approvals necessary to construct the Vertical Improvements in accordance with the Project Development Plan are not approved, Developer, may:

6.6.1 Amend the Project Development Plan with approval of the Agreement Administrator in conjunction with the project manager as provided in this Agreement; or

6.6.2 Delete the Site(s) that cannot be developed as a result of the denial of a development approval application and elect to give notice of the occurrence of a Termination Event in accordance with Article IX of this Agreement with respect to such Site(s).

6.6.3 Elect to give notice of the occurrence of a Termination Event in accordance with Article IX of this Agreement.

6.7 Authority of CITY to Monitor Compliance. During all periods of design and construction, the Agreement Administrator in conjunction with the project manager shall have the authority (at no cost to the Developer) to monitor compliance by the Developer with the provisions of this Agreement and the Project Development Plan. To that end, and subject to the provisions of Section 11.11 hereof, during the period of construction and without prior notice to the Developer, or



any Builder, representatives of the CITY shall have the right of access to the Project Area and to every structure on the Project Area during normal construction hours. CITY monitoring of compliance shall not be in lieu of normal engineering or building inspections for any element or subelement of the Infrastructure Improvements as required by other jurisdictional authorities. Said required inspections shall be coordinated by the Developer.

6.8 Discrimination. The Developer shall not discriminate against any person, or group of persons, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or any part of the Vertical Improvements, or in the design and construction of Infrastructure Improvements.

6.9 Restrictive Covenants: Unless otherwise approved in writing by CITY, property in the Project Area shall only be permitted to be used for Workforce Housing and directly related associated uses as defined herein and as shown on the Project Development Plan or may also have accessory uses customarily incidental to Workforce Housing and directly related uses. This restriction shall be included in a document to be executed by the parties hereto and recorded by CITY in the public records of Palm Beach County and shall constitute a covenant and restriction running with the land and binding on all successors and assigns of a site.

ARTICLE VII

DEVELOPER DEFAULTS, REMEDIES, TERMINATION AND FURTHER RIGHTS

7.1 Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default by the Developer, hereunder:

7.1.1 If the Developer, defaults in the performance of any obligation imposed upon under this Agreement or if the Developer, fails to complete any item required to be completed under the Project Schedule, and the Developer does not commence to cure such default within thirty (30) days after delivery of notice of such default from the CITY and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice; or

7.1.2 If any statement, representation or warranty made by the Developer herein or in any writing now or hereafter furnished in connection herewith shall be false in any material respect; or

7.1.3 If, (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets, or (b) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for more than sixty (60) days after any stay thereof expires.



7.1.4 If an Event of Default occurs and there is no cure, or if the Developer, as applicable, fails to comply with the requirements of Section 7.1.1 above, then Section 7.2 shall be applicable.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default hereunder, the CITY shall have the following non-exclusive rights: (i) to terminate the Agreement, (ii) to immediately enforce all of its rights under this Agreement; (iii) enforce its rights under the bonding provisions of section 4.3 and (iv) to avail itself of any right it may have at law or in equity. The remedies provided herein shall not require additional notice to Developer.

ARTICLE VIII

CITY DEFAULTS, REMEDIES, TERMINATION AND FURTHER RIGHTS

8.1 Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder by the CITY:

8.1.1 If the CITY takes any of the action specified in Section 11.1 of this Agreement without resorting to the power of eminent domain.

8.1.2 In the Event of Default as provided above, the CITY shall commence to cure such default within thirty (30) days after delivery of such notice of default from the Developer and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice. If an Event of Default occurs and there is no cure, or if the CITY fails to comply with the requirements of this paragraph, then Section 8.2 shall be applicable.

8.2 Remedies: The Developer or Owner, as applicable, may terminate this Agreement and the Developer or Owner will have no further obligations with respect to development of the Project.

8.2.1 The Developer may terminate this Agreement and the Developer will have no further obligations with respect to development of the Project.

8.2.2 The Developer shall pursue its remedies hereunder against the CITY only with respect to the part of the Project to which such default relates, and neither that default nor the Developer resulting enforcement action shall in any way affect the status, rights or obligations of the other parts of the Project Area under this Agreement.



ARTICLE IX

TERMINATION EVENTS, OPTIONS AND PROCEDURES

9.1 Termination Events. The occurrence of any one or more of the following, or an event or occurrence provided for elsewhere in this Agreement resulting in termination, shall constitute a Termination Event. A Termination Event shall not be considered an Event of Default. The following shall constitute a Termination Event:

9.1.1 If any proposed modifications to the Project Development Plan or Plans and Specifications are not approved in accordance with Section 6.4 of this Agreement.

9.1.2 If zoning, site plan or vacation or other development approvals necessary to construct the Vertical Improvements in accordance with the Project Development Plan are not approved by the CITY; or

9.1.3 If the CITY takes any of the actions set forth in Section 11.1 of this Agreement and such action causes the Developer not to be able to develop the property in accordance with the Project Development Plan.

9.2 Options Upon Termination. If a Terminating Event occurs, then any party may give notice of the Termination Event and that such party wishes to terminate this Agreement. However, Developer may take additional actions to cure the Termination Event, to the extent such event may be cured. Termination will occur on the date written in the notice of termination.

9.3 Bond Status Upon Termination. If any portion of the Infrastructure Improvements remains incomplete or unfinished at the time of termination, the Developer shall maintain a sufficient bond to cover the costs of completion. The value of the Infrastructure Improvements remaining to be completed is the amount of construction costs and expenses according to Exhibit "C", Project Development Plan.

9.4 Agreement Not To Terminate. Notwithstanding any other provision of this Agreement to the contrary, the Developer, may agree by written Agreement to continue the Agreement after the occurrence of an Event of Termination.

ARTICLE X

ANTI-SPECULATION AND NON-TRANSFER PROVISIONS

10.1 Purpose. The Developer represents and agree that its undertaking pursuant to this Agreement are for the purpose of developing the Project pursuant to this Agreement, and not for speculation in land holding. The Developer further recognizes, in view of the importance of the development of the Project to the general health and welfare of the CITY and that the qualifications, financial strength and identity of the members of the Developer are of particular concern to the CITY.

10.2 Assignment; Limitation on Conveyance. The Developer agrees that it shall not without the prior written consent of the CITY assign, transfer or convey this Agreement or any



provision hereof to another party, unless such assignment is made to: (a) a subsidiary or parent company; (b) any firm or corporation which the Developer controls, is controlled by, or is under common control with; or (c) any partnership in which the Developer has a majority interest (collectively, "Related Company"). In all instances, the transfer, conveyance or assignment must be made with prior written notice of at least thirty (30) days to the CITY.

ARTICLE XI

GENERAL PROVISIONS

11.1 Amendment to the Plan and Ordinances. The Developer shall retain any rights he may have to pursue remedies against the CITY with regard to any amendment to the Project Development Plan by the CITY Commission and any amendment by the CITY Commission to any existing ordinance pertaining to the Sites in the Project Area or any new ordinance enacted by the CITY Commission pertaining to the Sites in the Project Area which, in any event, touches or concerns the Project Area and causes the Project to be unable to be constructed in accordance with the approved Project Development Plan. Such action by the CITY may, at the election of the Developer, be the basis for a termination of this Agreement. This section does not apply to any ordinance or change to the Project Development Plan that has been approved or requested by the Developer. It is understood and agreed that it is the obligation of the Developer, to request any changes to ordinances in existence at the time of this Agreement that may be necessary to construct the approved Project Development Plan as provided in Section 6.4 of this Agreement and failure of the CITY to approve such ordinance changes shall not be considered as an action by CITY described in this section.

11.2 Non-liability of CITY or CITY Officials. No member, official or employee of the CITY shall be personally liable to the Developer, or to any Person with whom the Developer, or any Builder shall have entered into any Agreement, or to any other Person in the event of a default or breach by the CITY, or for any amount which may become due to the Developer or any other Person under the terms of this Agreement.

11.3 Approval. Whenever this Agreement requires the CITY or the Developer to approve any Agreement, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld, delayed or conditioned. The Developer and the CITY shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.

11.4 Force majeure. Subject to providing written notice of such an event and the party's intention to exercise the applicability of this provision, no party to this Agreement shall be deemed in default, and the time for performance of any required act hereunder shall be extended for such period, where such a default is based on a delay in performance as a result of war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions of priority, litigation, severe weather and other acts or figures beyond the control or without the control of either party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a party.



11.5 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

If to the CITY:

If to the Developer

Copy to CITY Attorney:

11.6 Time. Time is of the essence in the performance by any party of its obligations hereunder.



11.7 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

11.8 Amendment. This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties.

11.9 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by all parties hereto. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or other default by the other party.

11.10 Assignment. Except as provided in Section 10.2, this Agreement and the rights, duties, obligations and privileges of the parties herein are non-assignable and any purported assignment shall be void and of no force and effect and shall constitute a default of this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

11.11 Indemnification. Developer hereby agrees to release, indemnify and hold harmless the CITY and its respective elected officials, officers, employees and agents, from and against any and all claims, damages, suits, costs, expenses, liability, actions, penalties or proceedings of any kind or nature whatsoever, of or by anyone whomsoever, in any way resulting from or arising out of this Agreement or Developer's development, use or operation of the Property. This indemnification shall extend to all suits or actions of any kind brought for personal injury, bodily injury, death or property damage, destruction received or claimed to be received or sustained by any Person or Persons arising out of or in connection with any negligent act or omissions of the Developer, its contractors, agents, or employees.

This indemnification extends to recklessness or intentional wrongful misconduct of the Developer, its officers, contractors, agents, or employees from and against any claims, liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable costs, collection expenses, attorneys' fees, fees and charges of engineers, architects and other professionals, and all court, arbitration or other dispute resolution costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of the Developer, its officers, contractors, agents or employees or other person utilized by the Developer in performance or non-performance of its obligations under the Agreement. The Developer recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the CITY when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the CITY in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida.

11.11.1 This clause shall survive the termination of the Agreement. Compliance with any insurance requirements required elsewhere in the Agreement shall not relieve the Developer of



its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this article of the Agreement.

11.11.2 This Agreement shall be construed so as to provide the CITY the privilege of sovereign immunity, along with the protections provided in section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

11.12 Severability. The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11.13 Contingent Fee. The Developer represents and warrant that it has not employed or retained any Person to solicit or secure this Agreement and that they have not paid or agreed or promised to pay any Person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

11.14 Independent Contractor. In the performance of this Agreement, the Developer shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, developer or association of the CITY. The Developer and Builders, if any, and employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Developer in the performance of this Agreement.

11.15 Non-merger. None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the sites in the Project Area.

11.16 Not A General Obligation. Neither this Agreement nor the obligations imposed upon the CITY hereunder shall be or constitute an indebtedness or general obligation of the CITY or the CITY, within the meaning of any constitutional, statutory or charter provisions requiring the CITY to levy ad valorem taxes nor a lien upon any properties of the CITY.

11.17 Agreement Not a Development Agreement or Order. This Agreement is not, and shall not be construed to be, a development agreement as that term is defined by Section 163.3220, Florida Statutes, et seq. and none of the provisions of Florida law applicable to development agreements pursuant to that statute or related statutes shall apply to this Agreement. No permit or order issued pursuant to, or affected by, this Agreement shall be deemed to be a development permit or development order as those terms are defined in Chapter 380, Florida Statutes, or Chapter 163, Part II, Florida Statutes.

11.18 Parties to Agreement. This is an agreement solely between the CITY and the Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any Person not a party hereto other than the successors or assigns of the CITY, and the Developer.

11.19 Venue: Applicable Law. The Agreement exhibits, deeds, and other documents ("Agreement Documents") shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement Documents will be held in Palm Beach County. No



remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. This provision shall supersede and specifically replace all other law, venue and remedies provisions in the Agreement Documents.

11.20 Waiver of Jury Trial. THE CITY AND DEVELOPER HEREBY MUTUALLY KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE THE RIGHT TO TRIAL BY JURY, AND NO PARTY NOR ANY ASSIGNEE, SUCCESSOR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED THERETO, OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS RELATING TO THIS TRANSACTION.

11.21 Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect. In the case of conflict, the most restrictive term of this Agreement shall prevail.

11.22 Run with the Land. This Agreement and the covenants contained herein run with title to the Property. This Agreement will bind and inure to the benefit of the parties hereto and their respective heirs, representatives, lessees, successors and assigns. No assignment by the Developer shall relieve Developer of any responsibility or obligations under this Agreement unless specifically approved by the CITY.

11.23. Recordation. The parties hereto agree that an executed copy of this Agreement and exhibits attached hereto shall be recorded in the Public Records of Palm Beach County, Florida, at the expense of the Developer.

11.24 Non-liability of CITY Officials and Employees. No member, official or employee of the CITY shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the CITY for any amount or of any obligation which may become due to Developer under the terms of this Agreement; and any and all such personal liability, either at common law or in equity or by constitution or statute, or arising out of any and all such rights and claims against, every such person, or under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

11.25 Performance of Government Functions. Notwithstanding anything in this Agreement to the contrary, nothing contained in this Agreement shall in any way stop, limit or impair the CITY from exercising or performing any regulatory, policing, legislative, governmental or other powers or



functions that it may have with respect to the Property nor shall anything in this Agreement constitute or imply approval or special handling and/or consideration for or exemption from any permit by any regulatory authorities of the CITY.

11.26 Survival. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

11.27 Counterparts This document may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties agree to accept the execution of this document by electronic means.

11.28 Playground Equipment. Developer acknowledges their responsibility to design a plan for playground equipment of significant value for Mace Park.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY



IN WITNESS WHEREOF, the parties have entered into this Agreement on the date written above.

ATTEST:

CITY OF BELLE GLADE

BY: _____
DEBRA BUFF, CITY CLERK

BY: _____
STEVE B. WILSON, MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

GLEN TORCIVIA, CITY ATTORNEY

DEVELOPER

SIGNATURE

Print Name: _____

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, who was physically present, an individual who is personally known to me or who has produced the following _____ as identification.

Notary Public

Print Name: _____
My commission expires: _____



**CITY OF BELLE GLADE
PAYMENT AND PERFORMANCE BOND
(Pursuant to sec. 255.05, Fla. Stat.)**

Surety Bond No. _____

Any singular reference to Developer, Surety, CITY or other party shall be considered plural where applicable.

DEVELOPER:

Name:

Principal Business Address:

Telephone Number:

CITY:

CITY of Belle Glade

110 Dr. Martin Luther King, Jr., Blvd., West

Belle Glade, FL 33430-3900

(561) 996-0100

CONTRACT:

Date:

Amount:

Description (Name and Location):

SURETY:

Name:

Principal Business Address

Telephone Number:

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

This Bond is issued in favor of the CITY of Belle Glade/CITY conditioned on the full and faithful performance of the Contract.

1. Developer has entered into an Agreement with the CITY for the project titled RFP#04-2020 FORMER GOVE ELEMENTARY SCHOOL PROPERTY DEVELOPMENT (the "Contract"), with conditions and provisions as are further described in the aforementioned Contract, which Contract, including all of its attachments, exhibits and incorporated documents (hereinafter, collectively, the "Contract Documents") is by reference made a part hereof for the purposes of explaining this bond.
2. Principal and Surety are bound to the CITY in the sum of the Contract Amount set forth above for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.
3. THE CONDITION OF THIS BOND is that if Principal:
 - a. Performs the Work required of and in accordance with the Contract Documents at the times and in the manner prescribed in the Contract Documents, which are made a part of this bond by reference; and
 - b. In accordance with sec. 255.05, Florida Statutes, promptly makes payments to all persons, defined in sec. 713.01, Florida Statutes, who furnish labor, services or materials for prosecution of the work set forth in the Contract Documents described above; and



c. Pays CITY all losses, damages (including liquidated damages), expenses, costs, and professional fees, including but not limited to attorneys' fees, including appellate proceedings, that CITY sustains because of a default by Principal under the Contract Documents; and

d. Performs the warranty and guarantee of all work and materials furnished under the Contract Documents for the time specified in the Contract Documents, then this bond is void; otherwise it remains in full force.

4. Section 255.05, Fla. Stat., as amended, together with all notice and time provisions contained therein, is incorporated herein by reference in its entirety. Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in sec. 255.05(2) and (10), Fla. Stat. This instrument regardless of its form, shall be construed and deemed a statutory bond issued in accordance with sec. 255.05, Fla. Stat.

5. Any changes in or under the Contract Documents and compliance or noncompliance with any formalities connected with the Contract Documents or the changes does not affect Surety's obligation under this bond and Surety waives notice of such changes.

6. Principal and Surety expressly acknowledge that any and all provisions relating to consequential, delay and liquidated damages contained in the contract are expressly covered by and made a part of this Performance, Labor and Material Payment Bond. Principal and Surety acknowledge that any such provisions lie within their obligations and within the policy coverages and limitations of this instrument.

7. Any action brought under this instrument shall be brought in the state court of competent jurisdiction in Palm Beach County, Florida, and not elsewhere.

Surety and Developer, intending to be legally bound hereby, subject to the terms included herein and as required under Florida Statutes, do each cause this Performance and Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Signed and sealed this _____ day of _____, 2019.

Witness

Principal

Title

(Corporate Seal)

Witness

Surety



Attorney-in-Fact
(Attach Power of Attorney)

Print Name

(Corporate Seal)

END OF SECTION

SAMPLE



EXHIBITS

Exhibit "A" Project

Exhibit "B" Project Area

Exhibit "C" Project Development Plan

Exhibit "D" Project Schedule

SAMPLE



EXHIBIT "A"
PROJECT: PALM BEACH COUNTY PROPERTY APPRAISER SITE DETAIL;
LEGAL DESCRIPTION OF THE SITE

SAMPLE



EXHIBIT "B"
PROJECT AREA

SAMPLE



EXHIBIT "C"
PROJECT DEVELOPMENT PLAN

SAMPLE



EXHIBIT "D"

PROJECT SCHEDULE

THE ATTACHED SCHEDULE SHALL INCLUDE THE FOLLOWING:

- **Developer will apply to the CITY of Belle Glade for engineering permits within 90 days after the effective date of the Development Agreement.**
- **Developer will commence construction of Infrastructure Improvements within 120 days of issuance of all engineering permits.**
- **Developer, as applicable, will submit an application for a building permit within 60 days after the CITY approval of the Site Plan for the Project.**
- **The first site will be completed within 270 days from commencement of construction.**
- **The remaining sites will be completed within 24 months of the issuance of the first building permit; provided, however, the CITY may approve up to two (2) consecutive six (6) month extensions for such completion upon the request of the Developer, or Owner, or both, which approval will not be unreasonably withheld.**